

IN THE
UNITED STATES DISTRICT COURT FOR
NEW JERSEY

BENJAMIN J. WHERRY, SR.,
Plaintiff-Petitioner,

v.

CASE MANAGER COLE, FCI FORT
DIX, CASE MANAGER CORDINATOR
DONAHUE FOR FCI FORT DIX,
WARDEN J. HOLLINGSWORTH FOR
FORT DIX,

Defendant-Respondents.

Civ. Act. No.: _____

MOTION FOR TITLE 28 U.S.C. § 2241(c)(3)
WRIT OF HABEAS CORPUS PETITION ADDING A
TITLE 18 U.S.C. § 3626 COMPLAINT DUE TO
A REQUEST FOR AN IMMEDIATE INJUNCTION BY
WAY OF T.R.O. PROSPECTIVE RELIEF VIA
TELECONFERENCE HEARING AND/OR WRIT OF
AD TESTIFICADUM TO BRING WHERRY SUB JUDICE

COMES NOW, Plaintiff-Petitioner Benjamin J. Wherry, Sr., ("Wherry"), pro-se, pursuant to Title 28 U.S.C. § 2241(c)(3), and Title 18 U.S.C. § 3626 with respect to prison conditions, filing a writ of habeas corpus. He further ask this Court for a Teleconference hearing per the dictates of Fed. R. Civ. P. Rule 72, to be conducted as a result of serious irreparable injury being committed by Defendant-Respondent Case Manager Cole, and Case Manager Coredinator("CMC"), Donahue, and/or Wherry request this Court if need be to issue a Writ od Ad Testificadum to be issued to bring Wherry before teh Court to express his need for a emergency temporary injunction without any further delay to protect him from irreparable injury, and/or issue a writ of habeas corpus petition grant. In support, the following is submitted:

I. Jurisdiction

District Court's have jurisdiction arising from all suit complaints from federal facilities. See Title 28 U.S.C. §1691. Additional jurisdiction is attached in Title 28 U.S.C. § 2241(c)(3), whereas, a convicted American citizen is being held in a Federal Bureau of Prisons facility("BOP"), in violation of the Constitution, Laws and Treaties of America. Wherry also submits additional authoritative subject matter jurisdiction under Title 18 U.S.C. § 3626, whereas, his current confinement violates his reserved Constitutional Right's under his Bill of Right's 8th Amednment against Cruel and Unusual punishment. Such, actions will be alleged below and committed perpetually by one Case Manager Cole and his colleagues at FCT Ft. Dix.

II. Request For Waiver of Administrative Remedies Until A Determination Is Made On Wherry's T.R.O. Injunctive Relief Request

Prisoners retain certain Right's under the Federal Constitution and their Bill of Right's. Furthermore, prisoner's have an expressed right to challenge the nature of conditions of their confinement, and any inhumane treatment that encroaches upon the Eighth Amendment's Cruel and Unusual Punishment. See Title 18 U.S.C. § 3626; see also Brown v. Plata, 179 L.ED.2d 969 (2011)(holding "[] As a consequence of their own actions, prisoner's may be deprived of rights that are fundamental to liberty. Yet the law and the United States Constitution demand recognition of certain other rights. Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel punishment. The basic concept underlying the Eighth Amendment is nothing less that the dignity of man.")(Kennedy,

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J., joined by Ginsburg, Bryer, Sotomayor, and Kagan, JJ.).

Petitioner Wherry, is alleging egregious cruel and unusual punishment allegations which is and will result in irreparable injury if he is compelled to wait for the administrative remedy Process to conclude on his RRC and CCC Placement claims. As for Mr. Coles unprofessional actions whereas, he seeks to damage Wherry's integrity as a federal prisoner and/or defame his character which is discussed below, under Title 42 U.S.C. § 1997(e), Wherry does not have to exhaust, and/or he will receive retaliation for his complaints against Mr. Cole herein.¹ Wherry did commence his BP-8 Administrative Remedy Process on the RRC and CCC claims herein, he is at the BP-9 statge to the Wardens office.

In addition, because of the maltreatment and unprofessional conduct of Case Manager Cole, Wherry seeks intervention by injunction by this U.S. District Court. And again, he does not have to exhaust under Supreme Court's Case, Woodford v. NGO, 165 L.ED.2d 368 (2006).

He further request that the defendant's be served by way of the Marshall 285 forms and copies of this petition in accordance with Fed. R. Civ. Proc. 4. And, no more retaliation

1. Wherry's issue is dealing with his 10% halfway house date. If his (1)one year request is not put in to teh RRC and CCC Placement. He wil remain incarcerated passed the Intent of Congress under the 2007 Second Chance Act Title 18 U.S.C. § 3621. His 10% date is August 24, 2014, which would make his (1)one year 2007 Second Chance Act date August of 2013. The Administartive Remedy Process normally can take up to (90)ninety days and sometime months if there is continuances granted. To add, Wherry, is alleging because he has served (16)sixteen years of actual confinement without including any goodtime credits, he needs the entire (1)one year plācement in a RRC or CCC facility to obatin adequate medical and mental health care treatment by detached BOP doctors, and to obtain a job whereas, he is relocating to an entirely different state. Society is totally advanced then when he was incarcerated over a decade and half ago. Wherry also continue to receive

be committed against Wherry for him placing his constitutional violations before the Court.

Because of the need of intervention by this Court, Wherry pray's that this Court will (1) waive the administrative remedy process until the T.R.O. injunctive Telconference Hearing is conducted under Fed. R. Civ. Proc. 72, et seq., and/or (2) hold this 2241 writ of habeas corpus petition in abeyance until the pro forma remedy process is completed in which. Wherry has already commenced, so that Wherry can evoke this Court's attention to recommence this action if it surpasses his (1)one year August 24, 2013 2007 Second Chance Act date for RRC and CCC Placement, to desist and and all unconstitutional liberty interest and unconstitutional maltreatment against him by the defendant(s).

III. Procedural History

1. In March of 1996, Wherry was Indicted through the mail in a (3) Count Indictment for 922(g) felon in Possession of a Firearm; 841(a)(1) Possession with Intent To Distribute 60.82 odd grams of cocaine bases(CRACK) and 924(e) felon in possession of ammunition. See USA v. WHERRY, N.D. Ohio Case No. 1:96-CR-86. The 924(e) charge was dismissed prior to the commencement of trial with a deal made by his defense counsel and the government that Wherry stipulate to being

irreparable injury by the hands of Case Manager Cole, who seek to defame his integrity and character as a federal prisoner in front of his peer-inmates. e.g. infra.

a felon convicted of a prior state offense facing time of at least 1 year or more and the jury would hear any particulars about his prior convictions and Wherry could not testify in his own defense. Id. § 2255 filing, dismissed.

2. On March 20, 1997, after serving a year plus under house arrest and being placed back under house arrest after a jury convicted him on the two count indictment, while Wherry was facing a substantial sentence of 360 months to life, id. Sent Tr. @ N.D. Ohio dkt. sheet, he would receive on April 9, 1997, a 235 month term of imprisonment to be served followed by a (5)five year term of Supervised Release. Id.

3. In 2007, the Second Chance Act, was enacted under the Bush Administration, and the U.S. Senate and Congress. See Demis v. Snizek, 558 F.3d 508, 514 (6th Cir. 2009), sec.

2. Second Chance Act Procedural History.

4. Sometime in 2013, Wherry was arbitrarily and capriciously transferred by someone within the BOP Administration in the middle of the night, back to F.C.I. Elkton, Ohio against his Psychiatrist Dr. Ghanz written Orders for him not to return there. She's currently working as DAP Coordinator on the Westside Compound here at Ft. Dix, and Wherry has made contact with her through the e-mailing inhouse system. Nevertheless, shortly thereafter, various constitutional infractions by BOP staff Members there, Wherry had his custody classification upgraded from minimum out custody to in custody low here at Ft. Dix, and again transferred arbitrarily and capriciously. To be brief, Wherry had a mental health breakdown which stemmed from his initial reasons for such delapidated well being in his normal state prior to the first one at Elkton, Ohio when

he was in the SHU and thereafter transferred by an emergency mental health transfer, his plea for help went unheard by FCI Elkton's mental health staff. See WHERRY v. C/O LIASON, District of Massachusetts Wherry seeking help from the Court there but the Court alleged it did not have jurisdiction despite Wherry showing the connection to that case. That case is pending in the 1st Cir. being held in abeyance due to Wherry not wanting to respond yet for reasons he will explain to this Court at the teleconference hearing.

5. When Wherry arrived at FCI Elkton, He was placed on the Westside Compound for Administration & Orientation. He would receive his initial team there by Case Manager Cole, and Counselor Gonzales. Wherry inquired about his visitor fiancée getting approved for visitation and his halfway house consideration and Mr. Cole informed him that a general request of **60 to 90 days** is all that FCI Ft. Dix is is being made. Wherry explained his position about his extensive period of incarceration whereas, he was on chronic care and had mental health treatment and he was relocating to an entirely different State and that He has a need to receive and 2007 Second Chance Act of (1)one year consideration recommendation for a successful reentry. Mr. Cole informed Wherry that he would look into the matter. This took place after an happenstance talk with Mr. Cole prior to then in which Wherry believed caused Mr. Cole to commence his initial team right away, assuming because, the call-out notification indicated Wherry would be on the team docket at the time in two weeks.

6. Again, Wherry accosted Mr. Cole a week or so later, about his halfway house consideration. Mr. Cole again stated that, "we generally make a 60 to 90 days recommendation. That's all that will be recommended but, if you have reasons needed for more time, we will make that request." Wherry then informed Mr. Cole again of his extensive incarceration period and other related reasons why he needed the entire (1)one year. In short, Wherry reiterated that, "I've been in for almost 16 years and need the year for Mental Health Treatment and Health chronic care and to have a more successful chance of making a re-entry back into society. I also am terrified of coming back, whereas, in my recent transit, in talking to 7 out of 10 guys the seven was back in for Supervised Release violations. And, I am relocating to another state." Mr. Cole replied, "you've been in for a total of 16 years?" Wherry replied, "yes, I've never been home yet," and reiterated, "I am scared to go back out in society without a meaningful chance to adjust because, I witnessed a plethora of inmates return."

Mr. Cole then stated that, "Let me look at your file and see if you have a re-location request in it, then look at some other things and see if I will make the (1)one year halfway house request on your behalf. I will have the halfway house packet done by the time the quarantine is lifted in the Eastside and all you will have to do is sign your packet once you come over there. But don't come looking for me because, I have training and will not be back for a week. I'll call you over and you will probably be placed in 5751 until a bed comes open."

7. Subsequently, due to the quarantine being still instituted against housing unit 5752, for medical reasons, Wherry was transferred over to Unit 5751 on the Westside Compound here at FCI Ft. Dix. When he came across Mr. Cole on one of the walk ways, again, Mr. Cole confirmed that he would be working on his halfway house request, but he has a long waiting list. Mr. Wherry after this occasion, stopped in the staff alley a few more times to inquire about whether or not his halfway house papers are being completed. He was told by Mr. Cole that he has a long waiting list, and that Wherry's name was down the line. On the last scenario's of Wherry's quest to get his halfway house packet done, Mr. Cole told Wherry again, "you will only be considered for 60 to 90 days recommendation." Wherry then informed Mr. Cole about their former encounterings about this issue to bring back to his remembrance of Wherry's initial multiple request for halfway house, and how he responded. Mr. Cole again reaffirmed that he had a long waiting list and he would probably not get to Wherry's halfway house for about another week. Again, Wherry had to return to accost Mr. Cole about his request being made for halfway house.

Mr. Cole informed Wherry again that, he would only be making a 60 to 90 day recommendation. Then Wherry again with much patience, reiterated why he needed the entire year. Mr. Cole then informed Wherry to put his request for (1) year down on a cop-out and explain exactly why he needed the complete year to re-enter society. Wherry complied as directed.

8. On yet another occasion, Wherry accosted Mr. Cole about putting in his halfway house request at his office in

staff alley. Case Manager Cole then told Wherry, "I'm backed up with halfway house request, so you are on the list. I am going to be putting you in for 60 to 90 days recommendation." Wherry replied, "I need one year again, for various reasons. We've been here." To be succinctive, Case Manager Cole replied, "okay, put down on a cop-out exactly why you need one year halfway house. I want to be able to explain to my boss Mr. Whitenour and Donahue exactly why you need that much time." **See Ex. A. Cop-out Request Explaining exactly why Wherry needs (1)one year halfway house.** Again, Wherry complied, and within ten minutes returned with the cop-out explaining his needs.

9. The next day. Wherry was summoned to Case Manager Cole's office in staff alley. He would inform Wherry to have a seat. He then stated that, "I am going over your cop-out request for halfway house. I do not see in your file where you have had mental health treatment, it's not noted." Wherry replied, "how can that not be noted in my files when I was sent on an emergency medical flight to Federal Medical Center Devens and placed in a mental health unit?" Again, Cole denied seeing this information in Wherry's institutional file, and he could have simply reviewed Wherry's procedural history of transfer's and/or Wherry's last team done by Mr. Hayes at FSL ELkton, Ohio noting this information in his progress report. Nevertheless, Wherry complied and attempted to assist Mr. Cole the best way he could.

11. Case Manager Cole then opened Wherry's 5 to 6 inch BOP file that consisted of 15+ years of document's. He stated then, "Okay, let's go from day one 1997 when you first came in at USP Lewsiburg. I want you to explain how you got transferred

from that point on in the BOP." Wherry asked, "why is that relative when the breakdown is already in the computer?" He replied, "Because, I need you to explain it so I can understand it all, and explain to my boss why you need the year you are requesting. This is all part of the process. I can see you have some serious incident reports. And your prior state cases are for serious violence. So, if I am going to put my name on this recommendation, I want to make sure I am doing it right?"

Wherry then explained to Mr. Cole that his prior state cases is not even scored under the BOP's BP-15 custody classification point sheet for violence because it's 15 years or older. And, if Mr. Cole looked at Wherry's progress reports done by Mr. Hayes, he would have seen on the first page that he's incarcerated under a non-violent offense category.

Wherry also informed him of the Court's professional judgment lenient treatment of him in the Northern District Court for Ohio during his trial, conviction and sentencing hearing proceedings. Wherry explained to Mr. Cole that, he had received an own recognized bond, which consisted of him being placed under house arrest. And, even after was convicted, he remained on bond under house arrest facing a substantial sentence of 360 months to life

2. Wherry was arrested for three prior cases of felonious assault. Two cases received suspended sentences and he received 2 to 5 years sentence for the last with it being reduced from a 3 to 15 years and mandatory 3 years for the alleged gun used in the crime. The gun specifications was dropped even though the alleged victim was shot and again, Wherry's charges was aggravated assault, 2 to 5 years. What Mr. Cole does not know is Wherry's initial charging instrument in the state dealt with "excessive force in self defense," i.e., the case he received prison time on in the State of Ohio was reduced to 2 to 5 years, and he was paroled

imprisonment. Mr. Cole stated that this information was not in Wherry's files, presumably at the time he was talking, he was making reference to Wherry's PSIR(Presenetnce Investigation Report). See ft. nt. 1., and 2. supra. Wherry went on to add that he had been in a camp with outcustody level working on a outside the fence gate pass without incident, until he was arbitrarily and capriciously deprived of his outcustody level points by FSL and FCI Elkton, Ohio staff, and the more when he had the mental health crisis, Dr. Jacobs and Dr. Clifford refused to aid him because they said he was melingering, so Wherry received two uncalled for incident reports. He then was transferred to FCI Ft. Dix, a higher security level facility and he has minimum time left on his sentence.

An argument ensued between Wherry and Case Manager Cole. Mr. Cole felt in his mind that Wherry was not aiding him ~~enough~~ with going over his extensive BOP file, in which, was not Wherry's job. In short to not belabor the point, Mr. Cole stated; "That's it. Im done. I'm going to make my recommendation and that's going to be it." Wherry replied, "It is what it is., you do what you have to do and I will go from there." Mr. Cole went on to state, "if you do not like my recommendation, you can file a BP-8 administrative remedy process." See Wherry's Cop-out @ Ex. A. Explaining Cole's initial recommendation of 180 days. Clearly, Cole's beligerant unprofessional conduct was

not an attempt to provoke Wherry to request a transfer
 within 10 months under Ohio's State Parole Authority Shock Parole.
See WHERRY v. GRONDOLSKY, Dist. Ct. Mass. Case No. 10-40159-FDS
Exhibiting State of Ohio Sentencing Transcripts.

aimed at trying to provoke Wherry to respond aggressively. However, Wherry remained within the boundaries of not committing a BOP prohibited rule of insulence against staff.

12. After Wherry e-mailed his family, fiancée, and contacted one of his current defense attorney's, Mr. Terez, in Cleveland, Ohio to express his frustration and disgust with how BOP staff here at Ft. Dix can simply ignore Congresses and the legislative branch intent concerning the 2007 Second Chance Act, and his need for real assistance to re-enter society, Wherry did exactly what he informed his people of liberty interest with his incarceration, he contatced the President Barack Obama, Attorney General Eric Holder and his U.S. Senator Representaive Sherrod Brown. See Ex. B. Correspondences' sent. Wherry, was re-summoned to Case Manager Cole's office in the staff alley, again, after these contacts were made.

Upon Mr. Wherry entering, Case Manager Cole stated, "I normally do not reconsider my own decisions, and I have spent way to much time on this already. However, I been looking over your file and see that some injustices has happended against you, and I am not going to get into some of them, I just don't want to go back and deal with them because, we cannot do anything about them, like how you got transferred here, I do not see any notations how and why they sent you here in your file, they just got rid of you and dumped you on us, and I spoke with Dr. Ghanz, and she informed me that she noted in your psych file she recalls your case and you were not suppose to be transferred back to Elkton, Ohio. I am just going to try an deal with the here and now and how we can do this on

your behalf?" Wherry then apologized for his defensive demeanor and explained how he is frustrated with the perpetual injustices beginning at USP Leavenworth Kansas back in 1998. See WHERRY v. WARDEN BOOKER, et al., U.S. Dist. Ct. for Kansas. Then Cole kept trying to get Wherry to explain to him what happened at FCI Elkton, Ohio by staff. But Wherry, knowing he was feigning towards him, and that Mr. Cole could not be trusted, stated that he did not trust him and he did not want to state what staff did to him. Mr. Cole then said, "what if I had Dr. Ghanz tell you that you can trust me? would you then tell me?" Wherry replied, "no, I do not trust you or any staff in the BOP." He then replied, "Never mind, I am going to just handle this request for (1)one year halfway house. You just have to trust when someone is really trying to help you. I understand that you have been ^{done}wrong, but everyone is not trying to harm you." Wherry said, "well, I've been hurt for so many years....," Mr. Cole cut him off and said, "well you are going to continue to get hurt here if you don't tell me what's going on," and had a wry smile. Wherry stated, I do not want to talk about it. He then said, "I am going to show you, Look. This is the recommendation that I have done for you, Look how long it is compared to these other one's. And, I have spent a lot of time on this. I am going to contact my boss Mr. Whitenour, and see if he will sign off on it, but we still might face a problem with Mr. Donahue." Mr. Cole then through physical antics, grabbed his security radio and called for Mr. Whitenour the Unit Manager and requested that he call him back on his office institution line. From What Wherry could tell, Whitenour informed him that he would

come over to discuss this situation per Mr. Cole's request. Mr. Cole stated also that he wanted to show Mr. Whitenour some things within his file and why the (1)one year recommendation should be made or something to that effect. However, Mr. Whitenour never showed up as Wherry conversed with Mr. Cole for well over 30 minutes or so about halfway house and his plans when he get out.

Wherry and Mr. Cole continued to have this extensive conversation again while waiting on Mr. Whitenour to show up. He informed Mr. Cole that he wanted to begin some re-entry programs that will aid prisoner's getting released back into their communities. He told Cole, "the budget is 6.6 billion dollars for the BOP. For instance, you guys give a guy a bus ticket, enough money for one meal and cab fair and the bus ticket that takes them home, then you essentially tell us, go ahead, go back into society and become a productive citizen," by the way you was not before you went in." "How does this protect society, and you have guys that has been in like me for a decade and half or longer?" Despite Cole's negative views on Wherry's plans whereas he said, "if one guy fails your programs, your entire program is a failure and no one want prisoner's back in their communities and they've been gone for twenty years....," Wherry still acted cordial and stated, "I do not know where you've been, but American's in my community want their family members home especially, where they are incarcerated under lengthy sentences for non-violent offenses." Finally, after more conversations, they got back on track.

Wherry was not permitted to read Mr. Cole's Recommendation made on his behalf for (1)one year Halfway house. Mr. Cole read briefly from his statement, turned the computer around, and pointed to what he called a extensive request made for halfway house on Wherry's behalf, in which, it appeared to be roughly one and a half inches long. The paragraph was succintive, in relation to what he needed those making the decision ^{for} Wherry to know with his extensive case file and criminal case as an whole and he's entitled to under Title 18 U.S.C. § 3621 (5)five factors for receiving a (1)one year recommendation.

Because, after Mr. Cole read this small paragraph it did not include none of the reasons Wherry placed on the cop-out per the dictates of Mr. Cole, to the best of Wherry's knowledge, in what Cole read to him. As noted below and above, Wherry submitted an e-mail correspondence to the Warden and A.W.'s offices. See Ex. B. Attahed e-mail to Leter to the President.

As noted in the e-mail, Wherry simply informed the A.W. and Warden's offices about his extraordinary treatment during trial by the Judge Kathleen O'Malley that presided over his case with him being palced on halfway house during trial after his convictions and before his sentencing commenced. He also notifed them of other relative information left out by Mr. Cole, clearly intentionally concerning Wherry's history. Wherry made these e-mails furthermore, because Warden J. Hollingsworth has stated to Wherry on at least two occasions, once at A & O and during another conversation that under the (5)five criteria functions of Title 18 U.S.C. § 3621, number (3) is the most important and when he is making his decision, i.e., "(3) the history and characteristics of the prisoner,"

what he's going to be focusing on the most."

Therefore, as a matter of Warden J. Hollingsworth decision to handle request like this, it is clear that he has given these polestar directives to his Case Manager's staff and more than likely through his Case Manager Coordinator Mr. Donahue. Simply, Mr. Cole in filing for Wherry's request for (1)one year halfway house abdicated his duty to include crucial history and characteristics information that can be added way beyond the BOP history and characteristic's information inside or Wherry's BOP file, and this information was readily accessible to him in Wherry's BOP file and the more made privy to him based on Wherry being told to fill the cop-out request to explain exactly why he needed the full (1)one year term of halfway house. Simply, the precise candidate for halfway house would be Wherry, who proved that he was on pre-trial under house arrest for well over (1)one year without incident, dropping monthly urines and not violating that supervised provisions of the Court while on bond. Wherry is/was entitled to this information to be placed in Mr. Cole's recommendation per the dictates of Title 18 U.S.C. § 3621, sec. (4) & (5), so that the Case Manager Coordinator Mr. Donahue can make a more reliable decision on his Unit Teams Recommendation of (1)one year halfway house made on Wherry's behalf.

13. On March 20, 2013, Wherry was called into Mr. Cole's office from his work detail at Safety Department. He was informed by his supervising C/O work detail boss to report back to his Unit to See Mr. Cole at recall. Mr. Wherry has submitted a cop-out concerning his good time that should not have been taken for minor BOP infraction 300 series incident

reports.

Upon arriving at Mr. Cole's office at staff alley, Mr. Cole stated that, "I cannot help you with your request made concerning your good time that you are trying to get back. Anything dealing with good time or your sentence length must be made to Ms. Hernandez over at R & D." Mr. Wherry replied, "okay." But, he stated. "hold on a minute. You know that cop-out you sent to the A.W.'s office over the weekend for better words less than shit, caused a big stink." Id. @ **Ex. B. Attached To Presidents letter.** He went on to state that, "I don't need other people in the A.W.'s office knowing about a special recommendation being made on your behalf." Wherry said, "what's special? What did I say wrong? I simply informed the Warden and A.W. about other information that was not privy to him in your Recommendation request that was made on my behalf so it can aid them with my decision for halfway house placement." "No, you can do that, but you just have to let things take its course. So, chill out. I don't want people seeing this in the A.W.'s Office." 3

14. On March 21, 2013, the very next day, Wherry was again summoned back to Mr. Cole's office at staff alley. Case Manager Cole was speaking with Counselor Dickson at the time. Once Dickson left, Mr. Cole told Wherry that, "Your halfway house recommendation is back and it's ^{not} good, it's an unfavorable decision." Wherry said, "okay, what's it saying?" Mr. Cole stated, "My boss Case Manager Coordinator Donahue denied the (1) one year request and only recommended 180 days. If you want, you can file a BP-8 remedy. Mr. Gonzales isn't here, you can get it from Mr. Dickson tomorrow.

That's it." "Okay, fine," Wherry replied and Mr. Cole further stated, "look I did my job, that's all that I can do." Wherry said, "fine." And as he was going to leave out of the office. Mr. Cole again asked him whether or not he would file a BP-8 remedy. Wherry simply brushed him off politely. However, Mr. Wherry returned shortly to find out the CMC name. And, again, Mr. Cole stated that, "you can file a BP-8 if you are dissatisfied." Wherry said, "okay."

15. Wherry went to the law library, and drafted up a correspondence as noted above, to the President, Attorney General and one of his U.S. Senator's. Id. Although, these legislative members are busy, they do take out the time to consider real genuine correspondence made to their cabinet and offices.⁴

Wherry, on the next morning went to mail the correspondences through the FCI Ft. Dix Legal Mail process. He had to unfortunately deal with the totally unprofessional conduct of Mr. Dickson.

3. It is totally unclear what Mr. Cole meant by "I don't need other people in the A.W.'s office knowing about a special recommendation made on your behalf." This does not make sense because, the halfway house packet still has to pass through that office's gateway. But he did state that the Warden never see my e-mail anyway, because the secretry handles those correspondences.

4. Wherry asked Counselor Dickson on one occasion to give to Mr. Cole the Cop-Out regarding his request for good time to be re-instated. Mr. Dickson stated, "I don't want it, stick it under his door. So, on this occasion dealing with the correspondnce going out to the President, Senator and Attorney General, Wherry being a gentleman and not want to blindside Mr. Cole by any responses from those offices in the legilative branch put his copy under his door, i.e., the letter's talked about above and nothing else.

Mr. Dickson stated upon receiving the letters being mailed to the legislative branch, "you're writing the President? It wont do you any good." He then started laughing. Wherry in frustration stated that, " We'll see who is laughing when their cabinet and offices inquire about what I am writing them about." "Yea right, okay. Step out of my office." Wherry complied and stood outside of his door and placed his hands inside of his pockets to not be taken as being hostile.

As Mr. Dickson took his time documenting the letters in the Ft. Dix legal correspondennce log book, he then told Wherry to sign the log book. Wherry did not move and said, "Is it alright for me if I step back inside of your office, you kicked me out before?" He replied, "how else is you going to sign for them? Sure, you can step in." Then he took Wherry through a big ordeal as he tried to obatin the BP-8 that Mr. Cole told Wherry to retireve from Mr. Dickson based on his counselor Mr. Gonzales not being available. The BP-8 was to challenge Mr. Donahue's decision. Wherry received it.

Approximatley 15 minutes later, Wherry was summoned by Mr. Cole to report to his office at staff alley. Wherry complied after his BP-8 administrative remedy form was completed. Upon arriving to Mr. Cole's office, the subsequent conersation took place.

"What's this crap Mr. Wherry?" Wherry respondend, "a copy of the correspondences that I sent out this morning to the President and other legislative branch memebbers." "Why did you place it under my door? If you are going to put some crap like this under my door, why don't you be man enough

to hand it to me?" "Sir, I would have, but I was told by Mr. Dickson before that he would not take nothing for you, and to put it under your door." Mr. Cole responded, "well, I don't care who told you what. Do not place anything under my door, that includes drop notes. Anything that you or somebody place under my door, I will shred, again, that includes drop notes."⁵ Wherry replied, by cutting Mr. Cole off. "Whoa, what does a drop note have to do with me putting a letter to the President and other legislative members under your door?" He replied again, "I'm just saying, anything that's put under my door whether it be a letter or drop note I am putting it right in the shredder." Wherry then stepped out of his office. However, Mr. Cole ordered Wherry back in the office by direct order, and kept up with his unprofessional charade of foolishness holding his security radio in his hand on his desk. Wherry tried to speak up, and he said, "this is a one way conversation" however, Wherry was eventually let go because, he stepped out of his office again and begin to walk towards Mr. Dickson's office to hand him the BP-8 administrative remedy. Mr. Cole yelled to Wherry, "what's this mess? You have all kind of typing errors and mistakes.....," and Wherry replied, "exactly, I have minimum education that's why I need the (1) one year halfway house."

16. Wherry would thereafter go through a tyrad of summons being called back to staff alley over the institutional speaker

5. A drop note is a reference in the BOP used by staff and inmates to snitch out other inmates. This language has no bearing on Wherry's interaction with Mr. Cole nor with the correspondence sent to legislative branch members. Clearly, Mr. Cole actions constitute him trying to defame and slander Wherry's reputation and character whereas, there was other inmates present in the staff alley.

for him to report back to staff alley by Counselor Dickson and Case Manager Cole. And, he was informed that the page was made in different units, and there is an individual unit paging component.

17. On March 22, 2013, upon Wherry's fiancée who traveled to Fort Dix all the way from the State of North Carolina to visit him, being rejected for visitation due to the Eastside compound visiting room being shut down based on allegedly a security breach concern.⁶ Wherry, went to the mess hall for lunch having his visitation complaint and halfway house complaint in concern^{when he} went to speak with any Warden staff members. The Warden was there.

While initially standing in line waiting, Wherry noticed case Manager Cole and Unit Manager Whitenour standing roughly 15 to 20 feet behind the warden. After a few minutes of standing there, Wherry noticed Mr. Cole and Whitenour walk away. Wherry and his witness went to eat then returned to the line, CMC Mr. Donahue appeared walking by him. Wherry learned his identity after another inmate accosted him about his matters. Then, Wherry begin to converse with him about the 180 day Recommendation made by him striking out his Unit Team Manager Mr. Whitenour and Case Manager Cole's Recommendation based on a collective or generalized understading to all

⁶ It is unclear how the Warden and A.W.'s can have visitation on the same day of the breach of security Thursday (3-21-13) supposedly occurred and run the visits all day long until 3:00pm, with work call and a re-opened compound, and then inform inmates that visiting and commissary is suspended until further notice. See Ex. C. It should be noted that the visiting room is a separate secured building from the housing units, and the entire compound was initially in their units under lockdown status except

all inmates and each individualized case facts and institutional file.⁷

Wherry then stated, "so, do your decision negate my unit Teams decision for a (1)one year recommendation?" Mr. Donahue then replied, "oh no. Your Unit Teams decision is still there. It is up to the Warden to determine which one he'll go with." The conversation ended. Wherry returned to the waiting line for the Warden.

18. After roughly a (30)thirty minute wait, Wherry finally reached the Warden. Because of the large volume of inmate complaints dealt with the visiting room being shut down after Thursday visits that ran all day without incident, and inmates being notified late that day approximately at 3:00pm give or take some minutes explaining to all inmates via e-mail that visits and commissary was suspended until further notice, families already lodged at the Airforce base and other surrounding hotels would not be permitted entrance. Soon as Wherry reached the line, the Warden attempted to speak^{to} the inmates as a group collectively.

for feeding times, and those was done under controlled movements inpart, so no one could get to visitors on the day of the breach of security, but their inmate family members that they came to see. This decision was clearly a abuse of discretion whereas, families came from all over the world and this Nation to see their loved ones and with a pressing economy as is, the Warden simply could have limited visiting hours to a half an hour whichever he saw it fit, so that family members, like my fiancée did not have wasted invaluable limited financial resources.

7. It should be noted that Mr. Cole informed Wherry that Mr. Donahue stated that "due to your prior criminal history, your two old fighting incident reports and being in a camp twice and not staying their, and your extensive programing history which you can get a job quicker than any other inmate, and you gained a released address and your prior criminal cases being serious, Mr. Donahue states he is only recommending you for 180 days halfway house." Wherry states as told other staff, "the only difference in him going to the halfway house in 6 months as opposed to one year, is he will not have the invaluable opportunity

Nevertheless, Wherry continued with his request to speak with the Warden on an individualized basis. He virtually stated to Him, "Hello Warden, I respect you speaking to everyone at once, but, I need to speak to you individually." He responded, "Hold on, let me address this...." And, the Warden went on for a while discussing why he shut visiting down.

Again, with patience, Wherry made a few more pleas to speak with the Warden on an individual basis. Finally, the Warden stepped aside about 3 feet to the left of the waiting line, and said, "Okay. Let me hear your complaint." But asked first, "who is this?" Wherry replied, "he is with me." Then the Warden replied, "you have to get rid of that USP mentality. I don't take people with me on the street to talk with other people about my complaints." Wherry replied, "I'm not on the street, I am in prison and I don't want to be seen talking to staff alone."⁸

Nonetheless, Wherry tried to explain his situation about his halfway house, forgetting his visitation complaint because he had already heard the Warden's drawn out erroneous summation of position in why he closed down visiting stating that it was a breach of security. See Ex. C. Notification to inmates. But again, Wherry kept trying ~~trying~~ to speak about his situation, but, the Warden kept cutting him off. The Warden would say, "are you familiar with the five criteria's

to prepare to re-enter society. Whether he goin 6 months or 1 year the incident reports will still be there and his prior state cases. This just do not make sense.

8. Wherry has received multiple adverse reactions similar to what Mr. Cole is doing to him making it seem like things are that are not. See ft. nt. 5. supra. Wherry will thoroughly explain to this Court exactly what the BOP staff has done over his extensive period of incarceration at different facilities to retaliate against him.

that makes you eligible for the 2007 Second Chance Act?" Wherry replied, "Yes I am, I am familiar with Title 18 U.S.C. § 3621. I just want to get into the crux or exact nature of my complaint I am making." Wherry was cut off again and on several more occasions. And the Warden began after Wherry refused to entertain the criteria's for halfway house and informed the Warden that his position on the (1) one year recommendation was explained to him at A & O by him. Yet again, the Warden went on to state anyway, "I am big on (2) and (3), is what I really look at. You know what that is right?" Again, Wherry did not respond. He then said, "the history and characteristics of the prisoner."

Finally, Wherry said, "this is what I have been trying to explain to you Warden, information regarding my recommendation for RRC placement that may not be made privy to you when you review my file." He said, "alright, go ahead." And, Wherry stated the following; "I was on Bond for my trial and sentencing facing 360 months to life, and given House arrest for over (1) one year, I never violated the conditions of my bond, pre-trial release or house arrest. In fact, after my two count trial conviction occurred by a jury, I was again placed under house arrest, and was allowed to remain with my family until my sentencing commenced. I would receive 235 months and I returned back to the Court on my own volition."

Now, Wherry made this statement due to criteria (4) under Title 18 U.S.C. § 3621, which states that "any statement by the judge that imposed the sentence," can be made in the recommendation." See Title 18 U.S.C. § 3621 Sec. (b)(4).

Now, the district court Honorable Judge Kathleen M. O'Malley, made extensive statements regarding Wherry's respect he gave the Court and dealt with it, his overrepresentation of criminal history and her inability to go below the then mandatory crack guideline policies. See Sent Tr. @ U.S. v. WHERRY, N.D. Ohio Case No. 1:96-Cr-86 April 9, 1997 dkt. entry. However, because the sentencing transcript is not in Wherry's BOP file, presumably. Case Manager Cole should have simply reviewed Wherry's Judgment & Commitment Order, ("J & C"), where his sentencing Judge O'Malley placed in the "Statement of Reasons" section that she gave him a §4A1.3 overrepresentation of criminal history departure in accordance with Title 18 U.S.C. § 3553(c)(3), reasons for departing from the then mandatory guidelines.

Before leaving the Warden, Wherry asked the Warden, "whether or not He would see the initial recommendation by Unit Team or the second recommendation made by CMC Mr. Donahue?" He replied, "I will only see the latter one submitted."

19. Wherry then walked away and walked directly over to Case Manager Cole and Unit Manager Whitenour, that had another staff member standing with him.

He then stated to Mr. Cole who appeared uneasy and hostile from his visage. He started off listening with again, tension on his face. Wherry stated that, "Sir, I don't want you to think I am doing something behind your back, I learned from Mr. Donahue that his recommendation does not change my Unit Teams recommendation. Mr. Donahue said that, 'the Warden will see both of them,' but the Warden says different. I was under the wrong impression when I left your office that the one done

by Mr. Donahue negates yours. So, I apologize." Mr Cole replied, "You know Mr. Wherry, I was under the wrong impression to. From what I unerstand, Me and Mr. Whitenour can still make our request if we determine you need the one year." Wherry responded, "I know now, and I apologize for that because, I was under the wrong impression you gave me." He then responded, "It's to late for that, you know that little letter you gave to Mr. Dickson sending it to the President, well that's mailed out." Wherry replied, "Yes Sir, but if I said something that I was under the mis-impression, I can retract it." The unnamed staff member butted in and said, "You know, if you send something to the legislative branch they are going to just send it back to us to deal with it anyway." Wherry replied, "that's untrue. I received responses in the past that dealt with genuine issue's." Wherry turned back to Case Manager Cole and sdaid to him, "I simply want what I have coming so that I can restart my life over. I cannot believe you people can be numb to the fact a person, that has been incarcerated over a decade and half of time, can believe that he only needs 6 months to re-enter society successfully." Mr. Cole responded, "look, you almost killed two people and that can be looked at when I determine your halfway house. Technically, I can simply put you in for 60 to 90 days, because of your extensive programing, then we can wait on your administrative remedies and responses from the legislative branch to come back." "Oh really," Wherry responded. "Sir, I did not come over here to argue with you, and simply apologize for being under the wrong impression

you gave me." Mr. Cole then said, "you know Wherry, that little note you placed under my door...."⁹ Wherry stated, "that's it, me and you have nothing else to talk about. I never placed a note under your door and you know that it was a correspondence copy I sent to the President. You will be quoted saying that," Wherry walked away as Mr. Cole kept saying, "come back here, I am not finished." Wherry turned and said, "we are finished and I am going to quote you word for word and you are totally unprofessional."

This matter has escalated way out of control, and Wherry per the dictates of the constitution's 8th Amendment Cruel and Unusual Punishment has been encroached along with the Supreme Court's case, Brown v. Plata, 179 L.ED.2d 969 (2011), which held that:

"2. As a consequence of their own actions, prisoners may be deprived of rights that are fundamental to liberty. Yet the law and the United States Constitution demand recognition of certain rights. Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment. The basic concept underlying the Eighth Amendment is nothing less than dignity of man. (Kennedy, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)."

Wherry demands the dignity owed to him by BOP staff under

9. Again, Mr. Cole making this allegation that was not true nor relevant to Wherry's issue's because Wherry never placed a note under Cole's door. It was a correspondence to the President, Attorney General and his U.S. Senator. See Ex. B. Wherry will expound on the totality of this misconduct by Mr. Cole and explain how other staff members in the BOP has done the same at the teleconference and/or when Wherry is summoned sub judice. There can simply be no correction to Mr. Cole's action whereas, he is jeopardising Wherry's safety under falsehoods! Totally unprofessional.

the Eighth Amendment of the U.S. Constitution. And, Because of the perpetual mistreatment and irreparable harm that the BOP is committing against Wherry, whereas by dint, he was placed on a mental health transfer, by way of being committed in an inpatient local local ward hospital in the outside community in Elkton, Ohio and thereafter sent to Federal Medical Devens on a emergency mental health transfer air flight, whereas, committed in the mental health unit and forced medicated with psychotropic medication, as a result of BOP staff members actions against him clearly retaliating against him for his complaints of inhumane treatment while housed in their facilities. This Court must stop, as a matter of protection of human rights, Wherry's inhumane treatment and mental health sufferings which are perpetual, by way of Title 18 U.S.C. § 3626, et seq., temporary injunctive prospective relief. See Also Torture Statute 28 U.S.C. § 2340(1)(2)(A)-(C).¹⁰

Lastly, the (5)five criteria's for relief under Title 18 U.S.C. § 3621 that deals with the Second Chance Act clearly makes Wherry a prime candidate for (1)one year RRC or CCC placement based on the relative information placed sub judice, in this petition. Any liberty loss that is unnecessary, whether it be one minute, one day or one month more can constitute irreparable injury. In fact, the nature of Wherry's

10. Wherry has repeatedly tried show federal Court's that he is currently confined in violation of the Constitution, Laws and Treaties of America. See Wherry v. Grondolsky, Dist. Ct. of Mass. Case No. 10-40159-FDS; Wherry v. Tripi, et al., 2012 U.S. Dist. Lexis 40524; Wherry v. Farley, 2012 U.S. Dist. Lexis 32298; Wherry et. al., v. Administrative Office of the United States Courts, 2011 U.S. Dist. Lexis 70123. However, he has not had any federal court intervene on his behalf.

complaints, standing alone should raise eyebrows of this Court's legal authority to provoke it into action, and under the Federal Rules of Civil Procedure Rule 12, et seq., must be taken as true until rebutted by proven otherwise, constitutes irreparable injury. Wherry will prove his case standing alone in the cases cited supra., which are even more not cited against the BOP in various jurisdictions throughout this nation.

Furthermore, Wherry was impeded from making critical history and characteristic information about him in the recommendation Mr. Cole was submitting to Mr. Donahue and the Wardens office for review and approval of the (1) one year recommendation that Mr. Cole perfunctorily submitted, although Wherry did as directed by Cole and submitted this information in a cop-out for reasons to show why he needed the halfway house time. See Ex. C. Wherry's Cop-out to Mr. Cole.

This Court must intervene as a matter of law and protection of Wherry's Human Rights and then more protect Wherry's liberty interest thus, relieving Wherry of his incarceration burdens by the BOP that it and his employee's actions are clearly unconstitutional and a infringement of Wherry's liberties.

VI. Relief Sought

Because, Wherry is scheduled to be released on or about August 24, 2014, if Wherry gains his request for a recommendation of (1) one for the 2007 Second Chance Act, He can be released on or about August 24, 2013 give or take a few days depending on whether or not He receives the full 365 days are granted to him by the RRC and CCC placement Committee.

The relief and injunction sought by Wherry will be the least intrusive,¹¹ to protect Wherry's inherent federal rights under the Constitution, Laws and Treaties of America, whereas, He is subjugatedly being deprived under essential BOP Policy Statements and Title 18 U.S.C. § 3621 governing congressional statutes to have material and relative history and characteristic information given to the RRC routing process: officials to make their reliable decision whether or not to grant him the recommendation his Unit Team has perfunctorily submitted thus far on Wherry's behalf. supra.

Furthermore, in respect to Title 18 U.S.C. § 3626, et seq., due to the actions of Case Manager Cole and other BOP employee's, wrongful unprofessional conduct and actions committed against Wherry, which will be further elaborated on during the Teleconference proceedings conducted, and discussed already herein in part, this Court must decide the arbitrary and capricious actions of the BOP employee's from accruing any further, whereas, Wherry is receiving irreparable injury from BOP staff. If Wherry is subjugated to remain in the custody of the BOP,

11. Wherry stated that, according to Title 18 U.S.C. § 3621, (5) five criteria's for receiving a (1) one year recommendation, according to the fifth prong which states that; "(5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28," the Case Manager Cole as a matter of law, and BOP policy should have recognized that Mr. Wherry's file in the BOP exhibits convictions for crack cocaine and simple gun possession. The BOP here at Ft. Dix, has Memorandums up concerning the changes made to those prior conviction punishments. In 2007, and 2011, the United States Sentencing Commission under Amendments 706, 709, 741 and 750 made retroactive changes to sentenced defendant's under the 100 to 1 former ratio for a crack cocaine offenses and convictions in accordance with the legislative branch agreeing that the 100 to 1 penalty was too much and racially evoked, so the punishment was reduced to 18 to 1. This information was not included in Mr. Cole's recommendation. Wherry has not received any of this relief and his case is pending in the 6th Circuit Court of Appeals. See WHERRY v. U.S., COA No. 11-3042.

one hour, one day, one month, one year, or even one more minute or second loss of liberty that will go beyond August 24, 2013, can be well said that Wherry is receiving irreparable injury in connection to his liberty interest, mental health, health, safety and well being situated in a BOP facility. And/or, any other relief that this Court's deem necessary to hand out should be evoked by the Court sua sponte. This Court has the authority to Order Wherry's immediate release to his Supervised Release address without any further delay, and/or bring him sub judice.

**V. Request For A Three Panel Judge
To Decide On Injunctive Relief Sought
By Plaintiff Mr. Wherry**

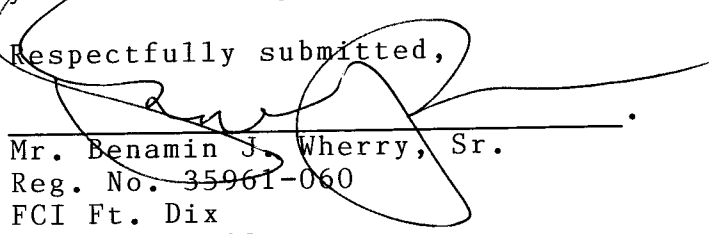
Wherry makes a request for a (3)three panel judge to issue a temporary injunction for relief he is seeking. See Title 28 U.S.C. § 2284. Due to the grievous and graveness of Wherry's claims before the Court, once the teleconference is conducted, and the totality of Wherry's complaints is heard, this Court will in fact determine as a matter of law, it is this Court's inherent authority and duty to protect any American prisoner confined within its territory and jurisdiction constitutional liberties under the Constitution Bill of Rights and Title 18 U.S.C. § 3626, whereas, prisoner's only retain certain liberties rights. Brown, supra.

C O N C L U S I O N

WHEREFORE, because Wherry has made a prima facie showing that he is suffering an irreparable injury, he prays that this Court will GRANT him the relief that he seeks and/or issue out any other relief that it will deem warranted to remedy this matter. And, He further request that this Court

Court review this petition sua sponte under the pro-se analysis of Haines v. Kerner, 30 L.ED.2d 652 (1972). And, let this matter be commenced without any further delay.

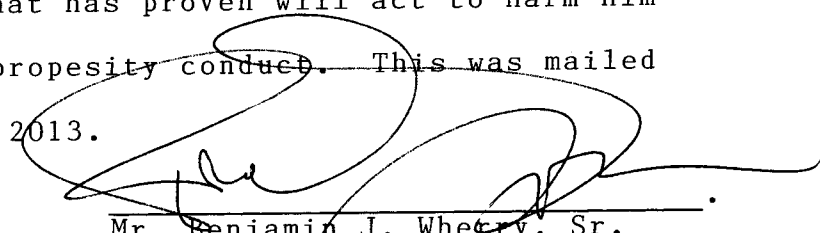
Respectfully submitted,



Mr. Benjamin J. Wherry, Sr.
Reg. No. 35961-060
FCI Ft. Dix
P.O. Box 2000
Fort Dix, New Jersey 08640

CERTIFICATE OF SERVICE

I Benajmin J. Wherry, Sr., do hereby certify that the foregoing petition was placed in my Unit Team Members hands with Marshal 285 forms for process of service on the defendant's and exhibits attached. First class postage due was attached. He has also included 285 Marshal forms for the Attorney General and The President whom is is the BOP Respondeat Superiors in this case. I further certify that all of the content's herein are made under Title 28 U.S.C. § 1746, to the best of my knowledge, belief, understanding and memory of events that occurred and such are not fully illustrated herein, whereas, Wherry want the totality of his claims submitted before thi Court on record to protect him from further retaliatory tactics of the BOP and its Employee's that has proven will act to harm him by their unprofessional propesity conduct. This was mailed on the 1st, day of April 2013.



Mr. Benjamin J. Wherry, Sr.
Reg. No. 35961-060
FCI Ft. Dix
P.O. Box 2000
Fort Dix, New Jersey 08640

E X H I B I T S

A thru C

EXHIBIT A

BP-S148.055 INMATE REQUEST TO STAFF CDFRM

SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) <i>Case Manager Cole</i>	DATE: <i>3/4/13</i>
FROM: <i>Benjamin J. Wherry</i>	REGISTER NO.: <i>35461-060</i>
WORK ASSIGNMENT: <i>SAFETY</i>	UNIT: <i>5752</i>

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

Sir, per your instruction I am formally requesting per policy that a (1) one year recommendation be made per the dictates of the Second Chance Act for halfway house. I have participated in extensive programming and two V-T programs that I completed, Culinary Arts and Computer class. I have been incarcerated 16 yrs. Almost one April 9, 2013 and I have mental health issues which has been a repeated occurrence. I will need this time to better prepare for my return to Society. I am approved to move to the


(over)

DISPOSITION:

Based on your prior convictions & non-convictions and Incident Reports. Since incarcerated within the FBOP you will be recommended for 150-180 days of RAC. Payment.

Signature Staff Member

Date

*3-6-13*

Record Copy - File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86
and BP-S148.070 APR 94

INSTRUCT OF WORK ~~CRIMINAL~~ FROM CHU. I have never
been there and I have not been in the community
again in 16 yrs. The year will permit me a
chance to obtain medical health care, psychological
health care, employment and other gains after
re-entry facility I am being released from
officer. Please note. I was facing 360
months to life while on (home here
continent) After I was found guilty by
a jury in the N.D. of Chu - I successfully
completed 18 months of house arrest and
walked in a Court room to be sentenced to
235 months, i.e., 19.7 years. See inmate file.
I have never been a threat to the community.
In fact, I recently had osteostomy. Due
to a mental health break down that out
custody was arbitrary & capriciously taken
away. Dr. Ghazizadeh is my former Doctor from
Eric Peters. Due to her prematurely leaving
Eric Peters, my mental health care plans was
changed by subterfuge. I simply need help.
and i year before house would end my re-entry
to society. Thank You for assistance.

EXHIBIT B

March 19, 2013

Mr. Benjamin J. Wherry, Sr.
Reg. No. 35961-060
FCI Ft. Dix
P.O. Box 2000
Fort Dix, New Jersey 08640

President Barack Obama
Office of the White House
1600 Pennsylvania Ave. NW
Washington, D.C. 20500

Attorney General Eric Holder
950 Pennsylvania Ave., NW
Washington, D.C. 20530

U.S. Senator Sherrod Brown
713 HART BLDG
Senate Office Building
Washington, D.C. 20510

**RE: Request for Immediate intervention and attention to my
Rejection of "Recommended (1)year Halfway House by FT.
Dix's Case Manager Cordinator Mr. Donahue.**

Dear Mr. President Barack Obama, A.G. Holder & U.S. Senator
Sherrod Brown:

I am writing your cabinet and offices concerning my re-
entry process back into society. It's very crticile that your
nobel office listen to my cry for assistance.

In 2007, the Bush Administration created and enacted the
2007 Second Chance Act. What this did was, lift the ban on
more that (6)six months halfway house, extending it to (12)twelve
months.

Recently, after an eventful painful request made to my
Unit Team Case Manager Mr, Cole of Bld. 5752 Housing Unit here
at Ft. Dix, FCI, he and my Unit Manager Mr. Whitenour made
a 330 to 365 days "Recommendation" for RRC placement. See
E-mail Attached. I then wrote that e-mail forementioned to
the Warden's & Associate's Warden's Office. And, they confirmed
that my RRC was in routing. Id.

On March 18, 2013, I was called into Mr. Cole's office
my case manager cocerning an unrelated cop-out request made
to his office over the weekend. He then expresse is dismay
about me sending the e-mail to the wardens office. I was informed
by him that I should not have sent the e-mail attached because,
my recommendation was a special request and certain people
did not need to see in the A.W.'s office.

On March 19, 200³8, I was called back into Case Manager Coles office and informed that my RRC placement was back and it was not a favorable response, I would be only receiving a (6)six month recommendation and that's all He could do, and that he done his part, if I want to file a BP-8 $\frac{1}{2}$ I could do so when my counselor or Mr. Dickson came in tomorrow. I later asked for the Case Manager Coordinator's name.

Because the BP8 $\frac{1}{2}$ process is a drawn out process, usually handled by other parties then the Warden and/or A.W.'s, and can surpass my 1year request, I am caught in a catch-22, that will have an lasting effect on how long I will receive in the halfway houe, and ultimately receive the time needed to re-enter society.

I do not know the full details of why Mr. Donahue the CMC denied my Unit Team's recommendation. Nevertheless, at the end of the reason, the conclusion would be an erroneous one that he was using incident reports that now has ben cleared on my record in the BOP, and in May of 2013, will totally be clear, and/or lesson my security level again.

Thus, I ask if I am going to be palced in a halfway house facility for 6 months, what's the difference if I am palced in there for 1 year? The only difference will be is I will have the needed time my Unit Team Recommended for me to effectively re-enter back into society.

Please note, I have served almost 16 years, come this April 9, 2013, that's without any goodtime added. I am currently relocating to an entire different state, and despite me acquiring *housing* with my fiancée, it will still be a challange readjusting to society, finding work, clothing health care and mental health care, etc., the most basic fundamental's of everyday living for any citizen in America.

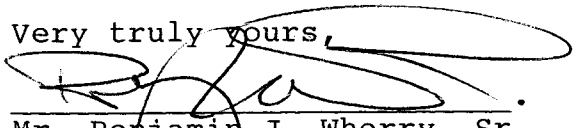
As you cabinet is most familiar with my in justice done in this case already, I am now acosting it for another reason, because, there serves no penalogical goal or interest to cause me to be subjugated to an extra (6)six months of undue confinement. In fact, at this point, it can be considered cruel and usual punishment with the crack laws being changed since 2007, and further erradicated by this offices Fair Sentencing Act of 2010, and yet I still sit incarcerated with the BOP Ft. Dix. facility clearly making rulings against me ebcause I have consistently lodge complaints when unfairly tretaed by one of its facilities.

Please note Mr. President. the District Court for the Northern District Court of Ohio, made the folowing ruling in Mallett v. Shartle, 2011 US-Dist. LEXIS 83967(Although the BOP is authorized to place an inmate in home confinement or CCC, an inmate is not entitled to such palcement at anytime. 18 U.S.C. § 3624(c). Mallets only entitlement is an individual evaluation for placement at a CCC consistant with the factors set forth in 18 U.S.C. § 3621").

And, in all due respects, this is what my Unit Team did for me, however, the CMC in the routing process for reasons not supported by the 2007 Second Chance Act feels in its discretion I do not need 1 year and 6 months should suffice to prepare me for re-entering society. Again, I've been incarcerated for a total of 16 years, not 16 months. And, I have lost everything. Clearly, I needed more than 6 months, if I did not, my Unit team that is dealing with my case file on a constant basis, not the CMC Donahue, would not have made the request for one year.

Please aid me with this matter without delay. Thank you for your time.

Very truly yours,



Mr. Benjamin J. Wherry, Sr.
Reg. No. 35961-060

c: file/bjw
Unit Team

TRULINCS 35961060 - WHERRY, BENJAMIN - Unit: FTD-F-C

FROM: Fort Dix Associate Wardens
TO: 35961060
SUBJECT: RE:***Inmate to Staff Message***
DATE: 03/14/2013 09:40:03 AM

Your RRC referral is currently routing for your RRC placement. The Unit Team is recommending consideration for 360 days.

I trust this has addressed your concerns but if you need more clarification please contact your Unit Team.

>>> ~^!"WHERRY, ~^!BENJAMIN" <35961060@inmatemessage.com> 3/10/2013 11:53 AM >>To: Warden
Inmate Work Assignment: Safety

Dear Warden:

I recently was recommended by my Unit team and Case Manager for 300 to 365 days of halfway house. Sir, I want you to know that before I was incarcerated or convicted, I was placed in "house arrest" by the Honorable District Court Judge Kathleen O'Malley in the Northern district of Ohio. I was facing a substantial sentence after I was tried by a jury on two counts, both crimes being non-violent crimes and constructive charges of gun possession and drugs.

I was placed on home monitoring(house arrest) when I was initially charged. Once convicted, I was placed on home monitoring again to wait sentencing again, facing 360 months to life and eventually I received a term of 235 months on concern with 5 years of supervised release. I never violated that supervision, nor was considered a threat to the community. And, even after I made it from max custody to out-custody, I was permitted to work on a gate pass without incident until my out custody was arbitrarily stripped due to me having mental health issues and custody points raised as a result. Otherwise, I did as I was ordered to do.

First, I most appreciate your consideration. Second, I most appreciate your humane thought process and treatment of the prisoner's you have been entrusted to manage and house when you gave your speech at A & O. Your speech forever sticks out in my memory and causes me to really think hard on the many challenges that lay before me upon my release, and I know that I want the best opportunity to ensure that at least I have at my disposal the tools needed to succeed when I re-enter into society.

Thus, I hope that you will consider the recommendation made by my Unit Team of 1yr. halfway house. With me being incarcerated almost 16yrs., it's clear that I need this time to efficiently re-adjust to the many challenges in the community. Again, I did complete 13 months of home confinement prior to my incarceration without incident. And, my probation officer Ki Donaldson wrote an extensive report as to why the judge should be lenient in sentencing me. This is information that your office might not be privy too.

I have no doubt that I will succeed! And, this is because, I finally learned the value of my liberty. I do not want to ever subject myself to confinement again. I may have had incident reports, but I have also had an extensive program history and taken and completed two V.T. courses with minutes left to finish my apprenticeship course in cooking. If I am given this opportunity you will not see my face in an inmate suit again. I will be part of the solution at this point to the mass incarceration of Americans. Big challenge, but reachable and attainable by the mindset I have placed my thoughts in.

Thank you for your time and assistance in advance. The 1 yr is needed the more because I have been approved to relocate to a state I have never been in, and to get the basic needs in life, a job, clothing, health care(mental as well) and the most part, re-adjust to living in a normal environment. Thank you for your time and attention and consideration to this matter. God bless and I only pray that soon after so many years of incarceration I can truly begin to start my life over.

EXHIBIT C

****** ATTENTION ******

Due to a breach of internal security on the East compound, visiting for the East compound is canceled and commissary will be restricted until further notice.

Commissary will be restricted to \$25.00 of hygiene items. Inmates will also be permitted to purchase postage stamps (1 book or equivalent value) and over the counter medications (OTC). Inmates will also be permitted to purchase typewriter ribbons and copy cards during the commissary restrictions. **Do not tamper with internal security devices or otherwise destroy government property.**

AW Hazlewood

EXHIBIT C Page 2.

If there are no additional internal security breaches, commissary for the East Compound will resume this Monday, April 1, 2013. Inmates restoration of visiting for the East Compound will be evaluated next week. DO NOT TAMPER WITH INTERNAL SECURITY DEVICES OR OTHERWISE DESTROY GOVERNMENT PROPERTY.

Acting AW Fitzgerald

April 1, 2013

Mr. Benjamin J. Wherry, Sr.
Reg. No. 35961-060
FCI Ft. Dix
P.O. Box 2000
Fort Dix, New Jersey 08640

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
RECEIVED

2013 APR 4 AM 10 23

Clerk of the Court
M.H. Choen U.S. Courthouse
400 Cooper Street, RM 1050
Camden, NJ 08102-1570

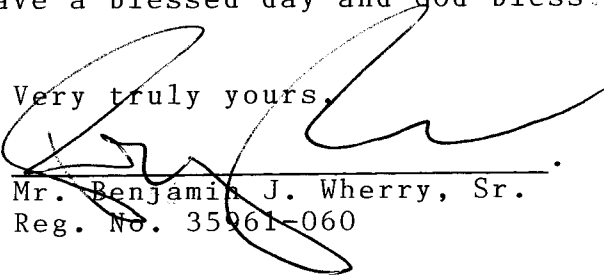
RE: WHERRY v. CASE MANAGER COLE, et al.
Civ. Act. No. [to be assigned]

Dear Clerk:

Please find enclosed Wherry's §§ 2241/3626 petition for immediate injunctive relief against the defendant's. Wherry further request that this Court's note that he's requesting for a three panel judge hearing. See p. 31 of writ of habeas corpus petition. There are exhibits attached as well. We thank you for your time and assistance in this matter. A copy of the \$5.00 fee is attached to this Clerk's letter that he made a request for it to be deducted from his prisoner account. Lastly, Wherry request in accordance to Bounds v. Smith, 52 L.ED.2d 72 (1976), Kn. 3, aid him with copying the petition to be served with the Marshal 285 forms and if a fee need be taken for those copies, make it know to Wherry so he can sign an extraction payment from his account.

May you and your staff have a blessed day and God bless you'll throughout the year.

Very truly yours,


Mr. Benjamin J. Wherry, Sr.
Reg. No. 35961-060

c: file/bjw
dnr/bf

Date: 03/30/2013
Time: 10:43:17 AM

Location: FTD

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

Request for Withdrawal of Inmate's Personal Funds

FTD-F-C, 35961060 - WHERRY, BENJAMIN

Encumbrance No.: 3531

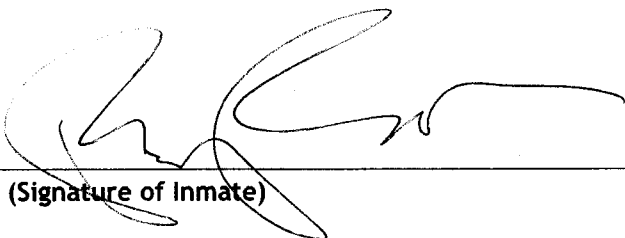
Please charge to my account the sum of **\$5.00** and authorize the same to be paid to:

Contact/FMIS Certification Address

District Court, Clerk Us
400 COOPER ST
RM. 1050
CAMDEN
NJ 08102-1570
United States

Purpose: Court Fees

Check Memo:


(Signature of Inmate)

35961060 - WHERRY, BENJAMIN

(Inmate Register No./Name)

(Signature of Approving Official)

(Signature of Deposit Fund Tech)

(Payment #)

The inmate's personal account has been charged in the amount indicated above.



7X

⇄ 35961-060 ⇄
Clerk Us District Court
M.H. Cohen U.S. Dist. CT.
400 Cooper ST
RM. 1050
Camden, NJ 08102-1570
United States

John J. Wherry &
35961-060
onal Institution

, new Jersey 08690

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